

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1381 of 1997

in

SPECIAL CIVIL APPLICATION No 3083 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHARUTAR VIDYA MANDAL

Versus

HEIRS OF SHARADKUMAR/JERAMBHAICHAUHAN

Appearance:

MR HARSHAD J SHAH for Appellant

Ms. Vasavadatta Bhatt for Respondent No. 1

Mr V M Pancholi, AGP for Respondent No. 2 & 3

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE D.P.BUCH

Date of decision: 21/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The appellant-Charutar Vidya Mandal, who is original respondent No.3, by invoking aids of Clause 15 of the Letters Patent, has questioned the validity and legality of the judgment of the learned Single Judge, passed on 9.7.1997 in Special Civil Application No.3083/84, inter-alia, contending that the original petitioner, the staff member of the appellant, was not entitled to the post of Lecturer as he had no lien upon his accepting the post of Principal, which was offered to him after undergoing the regular recruitment process. It was, therefore, contended that the judgment of the learned Single Judge, is vulnerable and is required to be quashed. Alternatively, it was also submitted that in Civil Application No.1299/99, a certificate is produced as Annexure 'I' dated 22.10.1997, whereby, it is very clear that the deceased, after the discharge from the post of Principal during the period of probation, was working gainfully elsewhere and he was earning during the period of seven months. It was also contended that the deceased was also working somewhere and he was gainfully employed but no particulars are indicated or pointed out.

2. During the pendency of the proceedings, the original petitioner-Sharadkumar Jerambhai Chauhan expired. He died on 5.10.1995 and his widow and three other heirs were brought on the record. Initially, the deceased was appointed as Assistant Teacher in the Institution of appellant-original respondent on 9.7.1973. He was thereafter, selected for the post of Principal of the said Institution and was given appointment on probation. Since his performance as Principal was not found satisfactory by the Institution, by the impugned order dated 7.1.1984 passed by the appellant-Institution, his services were brought to an end and he was discharged.

3. The original petitioner filed appeal before the Director of Higher Education, State of Gujarat. and challenged the termination of his services as Principal unsuccessfully. Therefore, he filed the aforesaid writ petition. The learned Single Judge, after considering the facts and circumstances and the rival submissions of the learned Advocates appearing for the parties, passed the impugned judgment, whereby, the following directions were issued:

(i) that the original petitioner (since died the heirs and legal representatives) shall be paid by the appellant-original respondent no.3, the amount of salary of the deceased of the post of Assistant Teacher at the rate at which he would have drawn the salary on the date of termination of his service till the date of his death.

(ii) the appellant-original respondent no.3, shall pay the respondents in appeal and heirs and legal representatives of the original petitioner, who shall be entitled to the said amount, which the deceased would have got, had he not died.

(iii) pay of the deceased petitioner on the post of Assistant Teacher shall be notionally fixed on the date of termination of his service as Principal and the revision of pay from time to time and other benefits shall also be given to the heirs of the deceased.

(iv) a direction was also given to determine and pay the amount payable within a period of three months from the date of receipt of the certified copy of the impugned decision. A direction for payment of interest at the rate of 15% per annum from the last date of the period stipulated in the judgment. It was also directed that in case of default of payment of arrears of salary of the deceased or payment of interest at the rate of 15% per annum, obviously, there was no question of reinstatement, since the original petitioner had died during the pendency of the proceedings.

4. After having considered the facts and circumstances emerging from the record of the present case and the submissions raised before us in the course of the hearing of the LPA, learned Advocate for the appellant has not been able to convince us that the impugned judgment of the learned Single Judge is in any way vulnerable or questionable excepting that during the period after termination, till his death, he was for some times working and was gainfully employed. It was,

therefore, jointly left to the Court to consider this aspect and deduct a reasonable amount from the amount already deposited before the Court pursuant to our interim order. It was stated before us that the amount of Rs.5,62,903/- was deposited by the appellant as per our interim direction. After having taken into consideration the period and the amount borne out from the record, the amount of Rs.1,25,000/- is required to be deducted from the amount deposited towards the due and payable amount to the original petitioner, taking the round figure. After deducting the amount of Rs.1,25,000/-, the heirs and legal representatives of the deceased petitioner-respondents No. 1/1 to 1/3 would be entitled to Rs.4,37,000/- towards arrears of the salary calculated as per the judgment under challenge.

5. As per the direction of the learned Single Judge, the deceased original petitioner is entitled to pay and other benefits after considering the pay of the deceased petitioner on the post of Assistant Teacher notionally to be fixed on the date of termination of his service as Principal and thereafter, any revision made from time to time. The amount of Rs.1,25,000/- which is to be deducted, shall be subject to the permissible and admissible amount of gratuity in terms of the prevalent rules applicable and payable to the heirs and legal representatives of the deceased petitioner. Obviously, therefore, the retiral benefits including gratuity etc. due and payable and permissible under the prevalent rules, shall be calculated by the appellant and shall be paid upon getting grant from the Government.

6. Learned Advocate Mr Shah submitted that the amount deposited by the appellant is required to be reimbursed in view of the order of this Court, if it is permissible and admissible. Mr Shah has stated that in this behalf, bills are already submitted to the Government for grant and it is repeated twice for the grant from the Government and despite that, the same has remained unresponded and unattended. It appears that because of the pendency of the dispute and legal proceedings, a decision may not have been taken but since now the dispute is going to be ended, respondent No.2, the State of Gujarat and Director of Education shall consider the pending demand of the appellant-Charutar Vidya Mandal, for reimbursement of the amount already deposited before this Court, pursuant to the order of the Court under grant-in-aid Code, as early as possible and preferably within three months from the date of receipt of writ, since the matter is very old. The amount admissible and permissible to be paid by the appellant to

the original petitioner's-heirs, is required to be reimbursed, as submitted by Mr Shah, under the grant-in-aid Code. In this behalf, if a demand is made by the appellant, respondents no.2 and 3 shall consider the same in accordance with the relevant grant-in-aid Code and the policy of the Government, and if it is permissible, the same shall be paid to the appellant.

7. With these observations, this appeal shall stand disposed of. Before parting with, it may be mentioned that the Fixed Deposit made, pursuant to our direction, is in the name of the original petitioner, who is since dead, obviously the amount will have to be deposited in the name of the widow. The Fixed Deposit is in the joint names of the Registrar of this court and the widow-respondent No.1/1. Upon expiry of the period of the current FDR, the renewal will be only in the name of respondent no.1/1 widow-Minalben for a period of five years and the amount of interest which shall accrue periodically, shall be payable to the widow. The amount of Rs.1,25,000/- to be paid to the appellant shall be separated from the current FDR and it will be placed in the FDR in the name of appellant for a period of six months. The said amount of FDR, after the renewal in the name of the respondent no.1/1- widow, there shall be no charge, withdrawal or encumbrances on the said amount without prior approval of the Court.

21.11.2000 [J N Bhatt, J.]

[D P Buch, J.]

msp.